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Legislation

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Contents

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the ICJ Opinion on the Kosovo declaration of independence.

[1] Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/1986

of 30 June 2016

supplementing Regulation (EU) No 223/2014 of the European Parliament and of the Council with regard to the conditions and procedures to determine whether amounts which are irrecoverable shall be reimbursed by Member States concerning the Fund for European Aid to the Most Deprived

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived ([1]) and in particular the fifth subparagraph of Article 30(2) thereof,

Whereas:

(1) In accordance with the fourth subparagraph of Article 30(2) of Regulation (EU) No 223/2014, where an amount unduly paid to a beneficiary cannot be recovered and this is a result of fault or negligence on the part of a Member State, the Member State is responsible for reimbursing the amount concerned to the budget of the Union.

(2) The document on irrecoverable amounts ([2]) submitted by the certifying authority to the Commission as part of the annual accounts, in accordance with Article 49(1)(b) and Article 48(a) of Regulation (EU) No 223/2014, each year from 2016 until and including 2025, establishes the irrecoverable amounts broken down by type of expenditure. That document should also include explicit information regarding the amounts that should not, according to the Member State, be reimbursed to the Union budget, in particular by demonstrating the administrative and legal measures taken by the Member State to effectively pursue the recovery of the irrecoverable amounts. However, as that document refers to amounts previously included in certified accounts submitted to the Commission, it should be submitted for the first time in 2017.

(3) In accordance with point (b) of Article 33 and with Article 49(1) of Regulation (EU) No 223/2014, deductions made before the submission of certified accounts cannot be considered as recoveries if they relate to expenditure included in the final interim payment application of a given accounting year for which the accounts are prepared. It should therefore be clarified that the information on irrecoverable amounts submitted under this Delegated Regulation should only concern amounts already included in certified accounts previously submitted to the Commission.

(4) In order to allow the Commission to decide whether the irrecoverable amounts should be reimbursed to the Union budget, the Member State should submit the required information, at the level of each operation and beneficiary, before the deadline for the submission of accounts set in Article 59(5) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ([3]). In accordance with that provision, it should also be possible to extend the deadline for the document on irrecoverable amounts.

([1]) OJ L 72, 12.3.2014, p. 1.

([2]) Appendix 4 to Annex V to Commission Implementing Regulation (EU) 2015/341 of 20 February 2015 laying down detailed rules for implementing Regulation (EU) No 223/2014 of the European Parliament and of the Council as regards the models for submission of certain information to the Commission (OJ L 60, 4.3.2015, p. 1).

([3]) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

(5) It is necessary to establish criteria that will enable the Commission to assess whether a Member State has been at fault or negligent in the recovery during the administrative and legal measures. The presence of one or more of these criteria should not automatically mean that the Member State has in fact been at fault or negligent.

(6) For reasons of legal certainty, the Commission should conclude its assessment by a given deadline and Member States should react to the Commission's assessment by another given deadline. For the same reasons, the Commission should be able to conclude its assessment even where the Member State does not provide additional information. However, in cases preceding a bankruptcy or of suspected fraud, as referred to in the third subparagraph of Article 30(2) of Regulation (EU) No 223/2014, the deadlines should not apply.

(7) Pursuant to the second sentence of the fourth subparagraph of Article 30(2) of Regulation (EU) No 223/2014, a Member State may decide not to recover from a beneficiary an amount unduly paid at the level of an operation in the accounting year concerned that does not exceed EUR 250, not including interest, in contribution from the Fund for European Aid to the Most Deprived ('the Fund'). In this case, the amount does not need to be reimbursed to the budget of the Union. No information will be requested on such *de minimis* amounts,

HAS ADOPTED THIS REGULATION:

Article 1

Submission of information on irrecoverable amounts

1. Where a Member State considers that an amount unduly paid to a beneficiary, previously included in certified accounts submitted to the Commission, is irrecoverable, and where it has concluded that this amount should not be reimbursed to the Union budget, the certifying authority shall submit a request to the Commission to confirm that conclusion.

2. The certifying authority shall submit a request referred to in paragraph 1, at the level of each operation, in the form set out in the Annex to this Regulation by way of the electronic data exchange system referred to in Article 30(4) of Regulation (EU) No 223/2014.

3. The Member State shall submit a request established in accordance with paragraphs 1 and 2 each year from 2017 until and including 2025 by 15 February with regard to the previous accounting years. The Commission may exceptionally extend the deadline to 1 March, upon request by the Member State concerned.

Article 2

Conditions for determining fault or negligence on the part of the Member States

The following criteria are indicative of fault or negligence on the part of the Member State:

(a) the Member State did not submit any description of the administrative and legal measures, with dates, taken by the Member State to recover the relevant amount (or to reduce or cancel the level of support or withdraw the document setting out the conditions for support referred to in Article 32(3)(c) of Regulation (EU) No 223/2014, where such a withdrawal is subject to a separate procedure);

(b) the Member State did not provide a copy of the first and any subsequent recovery order (and of any copy of the document reducing or cancelling the level of support or withdrawing the document setting out the conditions for support referred to in Article 32(3)(c) of Regulation (EU) No 223/2014, where such withdrawal is subject to a separate procedure);

(c) the Member State did not provide the date of the last payment of the public contribution to the beneficiary of the given operation and a copy of proof of this payment;

(d) the Member State, after detection of the irregularity, made one or more undue payments to the beneficiary in relation to the part of the operation that was affected by the irregularity;

(e) the Member State did not send the document reducing the level of support or withdrawing the document setting out the conditions for support referred to in Article 32(3)(c) of Regulation (EU) No 223/2014, where such withdrawal is subject to a separate procedure, or take any equivalent decision within 12 months of the detection of the irregularity;

(f) the Member State did not initiate the recovery procedure within 12 months of the support being definitively reduced or cancelled (either after an administrative or judicial procedure or by agreement of the beneficiary);

(g) the Member State did not exhaust all recovery possibilities available under its institutional and legal framework;

(h) the Member State did not provide documents relating to insolvency and bankruptcy procedures, where applicable;

(i) the Member State did not reply to the Commission's request for further information in accordance with Article 3.

Article 3

Procedure to determine whether an irrecoverable amount shall be reimbursed by Member States

1. Based on the information submitted by the Member State in accordance with Article 1, the Commission shall assess each case in order to determine whether the failure to recover an amount is a result of fault or negligence on the part of the Member State, taking due account of specific circumstances and the institutional and legal framework of the Member State. Where one or more of the criteria listed in Article 2 is fulfilled, the Commission may still conclude that the Member State has not been at fault or negligent.

2. By 31 May of the year in which the accounts are submitted, the Commission may:

(a) request the Member State in writing to submit further information on the administrative and legal measures taken to recover any Union contribution unduly paid to beneficiaries; or

(b) request the Member State in writing to continue its recovery procedure.

Where the Commission has taken the option referred to in point (a) of the first subparagraph, paragraphs 5 to 8 shall apply.

3. The deadline set in paragraph 2(a) and (b) shall not apply to irregularities preceding a bankruptcy or to cases of suspected fraud.

4. If the Commission does not act pursuant to and by the deadline set in paragraph 2, the Union contribution shall not be reimbursed by the Member State.

5. The Member State shall reply within three months to the Commission's request for information sent pursuant to paragraph 2.

6. If the Member State does not submit further information as requested pursuant to paragraph 2, the Commission shall continue its assessment based on the information available.

7. Within three months of receiving the reply from the Member State, or, in the absence of a reply by the deadline, the Commission shall inform the Member State where it concludes that the Union contribution should be reimbursed by the Member State setting out the basis for its conclusion, and requesting the Member State to provide its observations within two months. If the Commission does not act pursuant to and by the deadline set in the preceding sentence, the Union contribution shall not be reimbursed by the Member State.

8. Within six months following the deadline for observations by the Member State set out in paragraph 7, the Commission shall conclude its assessment based on the information available and, when it maintains its conclusion that the Union contribution shall be reimbursed by the Member State, shall adopt a decision. If the Commission does not act pursuant to and by the deadline set in the preceding sentence, the Union contribution shall not be reimbursed by the Member State.

For the purpose of calculating the Union contribution to be reimbursed by the Member State, the co-financing rate at the level of the operational programme, as laid down in the financing plan in force at the time of the request, shall apply.

Article 4

Provision of information on amounts not recovered that do not exceed EUR 250 in contribution from the Fund

Where a Member State decides not to recover from a beneficiary an amount unduly paid at the level of an operation in the accounting year concerned that does not exceed EUR 250, not including interest, in contribution from the Fund, no information needs to be provided to the Commission under this Regulation.

Article 5

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 June 2016.

For the Commission

The President

Jean-Claude JUNCKER

ANNEX

Submission of information on irrecoverable amounts — Food and/or basic material assistance operational programme (OP I)

a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q
Type of expenditure (1)	Name of operation and IT identification number	Name of beneficiary	Date and proof of last payment of public contribution to the beneficiary for the operation concerned	Nature of irregularity (nature to be defined by Member State)	Body which detected the irregularity (indicate which: MA, CA or AA or other, or name of EU body)	Date of detection of irregularity (2)	Total expenditure declared irrecoverable	Public expenditure corresponding to amounts declared irrecoverable	Amount of irrecoverable Union contribution (3)	Accounting year(s) in which the expenditure corresponding to the irrecoverable Union contribution was declared	Date of launch of recovery proceedings	Copy of first and any subsequent recovery orders (4)	Date of establishment of irrecoverability	Reason for irrecoverability (5)	Documents related to bankruptcy procedures, when applicable	Indicate whether the Union contribution should be borne by the Union budget (Y/N) (6)
<type="S" max-length="500" input="S">	*<type="S" max-length="250" input="M">* (7)	*<type="S" max-length="250" input="M">*	*<type="D" input="M">* + *<ATT>*	*<type="S" max-length="250" input="M">*	*<type="S" max-length="250" input="M">*	*<type="D" input="M">*	*<type="Cu" input="M">*	*<type="Cu" input="M">*	*<type="Cu" input="M">*	*<type="D" input="S">*	*<type="D" input="M">*	*<ATT>*	*<type="D" input="M">*	*<type="S" max-length="500" input="M">*	*<ATT>*	*<type="B" input="M">*
Technical Assistance	Op 1															
	Op 2															
						Sub-total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							
Type of material assistance 1																
						Sub-total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							

a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q
Type of expenditure (1)	Name of operation and IT identification number	Name of beneficiary	Date and proof of last payment of public contribution to the beneficiary for the operation concerned	Nature of irregularity (nature to be defined by Member State)	Body which detected the irregularity (indicate which: MA, CA or AA or other, or name of EU body)	Date of detection of irregularity (2)	Total expenditure declared irrecoverable	Public expenditure corresponding to amounts declared irrecoverable	Amount of irrecoverable Union contribution (3)	Accounting year(s) in which the expenditure corresponding to the irrecoverable Union contribution was declared	Date of launch of recovery proceedings	Copy of first and any subsequent recovery orders (4)	Date of establishment of irrecoverability	Reason for irrecoverability (5)	Documents related to bankruptcy procedures, when applicable	Indicate whether the Union contribution should be borne by the Union budget (Y/N) (6)
Type of material assistance 2																
						Sub-total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							
Type of material assistance n																
						Sub-total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							
						Total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							

(1) Corresponding to the information provided in the accounts, in line with Appendix 4 of Annex V to Implementing Regulation (EU) 2015/341. The reporting shall be by type of material assistance and by operation.
(2) The date on which the primary administrative or judicial finding on the irregularity was established.
(3) Calculated in accordance with the co-financing rate at the level of the operational programme, as laid down in the financing plan in force at the time of the request.
(4) In addition, when applicable, a copy of the document reducing/cancelling the level of support and /or withdrawing the document setting out the conditions for support referred to in Article 32(3)(c) of Regulation (EU) No 223/2014.
(5) Indicate whether the reason for irrecoverability is bankruptcy of the beneficiary. If not, indicate the applicable reason.
(6) When a request is made that the Union contribution should be borne by the Union budget, the Member State confirms it has exhausted all the recovery possibilities available through its institutional and legal framework.
(7) Legend for the characteristics of fields: type: N=Number, D=Date, S=String, Cu=Currency. B = Boolean — input: M=Manual, S=Selection, G=Generated by system — 'maxlength' = Maximum number of characters including spaces — ATT: Attachments.

Submission of information on irrecoverable amounts — Social inclusion of the most deprived persons operational programme (OP II)

a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q
Type of expenditure (1)	Name of operation and IT identification number	Name of beneficiary	Date and proof of last payment of public contribution to the beneficiary for the operation concerned	Nature of irregularity (nature to be defined by Member State)	Body which detected the irregularity (indicate which: MA, CA or other, or name of EU body)	Date of detection of irregularity (2)	Total expenditure declared irrecoverable	Public expenditure corresponding to amounts declared irrecoverable	Amount of irrecoverable Union contribution (3)	Accounting year(s) in which the expenditure corresponding to the irrecoverable Union contribution was declared	Date of launch of recovery proceedings	Copy of first and any subsequent recovery orders (4)	Date of establishment of irrecoverability	Reason for irrecoverability (5)	Documents related to bankruptcy procedures, when applicable	Indicate whether the Union contribution should be borne by the Union budget (Y/N) (6)
<type="S" max-length="500" input="S">	*<type="S" max-length="250" input="M">* (7)	*<type="S" max-length="250" input="M">*	*<type="D" input="M">* + *<ATT>*	*<type="S" max-length="250" input="M">*	*<type="S" max-length="250" input="M">*	*<type="D" input="M">*	*<type="Cu" input="M">*	*<type="Cu" input="M">*	*<type="Cu" input="M">*	*<type="D" input="S">*	*<type="D" input="M">*	*<ATT>*	*<type="D" input="M">*	*<type="S" max-length="500" input="M">*	*<ATT>*	*<type="B" input="M">*
Technical assistance	Op 1															
	Op 2															
						Sub-total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							
Type of action 1																
						Sub-total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							
Type of action 2																
						Sub-total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							

a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q
Type of expenditure (1)	Name of operation and IT identification number	Name of beneficiary	Date and proof of last payment of public contribution to the beneficiary for the operation concerned	Nature of irregularity (nature to be defined by Member State)	Body which detected the irregularity (indicate which: MA, CA or AA or other, or name of EU body)	Date of detection of irregularity (2)	Total expenditure declared irrecoverable	Public expenditure corresponding to amounts declared irrecoverable	Amount of irrecoverable Union contribution (3)	Accounting year(s) in which the expenditure corresponding to the irrecoverable Union contribution was declared	Date of launch of recovery proceedings	Copy of first and any subsequent recovery orders (4)	Date of establishment of irrecoverability	Reason for irrecoverability (5)	Documents related to bankruptcy procedures, when applicable	Indicate whether the Union contribution should be borne by the Union budget (Y/N) (6)
Type of action n																
						Sub-total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							
						Total	*<type="Cu" input="G">*	*<type="Cu" input="G">*	*<type="Cu" input="G">*							

(1) Corresponding to the information provided in the accounts, in line with Appendix 4 of Annex V to Implementing Regulation (EU) 2015/341. The reporting shall be by type of action and by operation.
(2) The date on which the primary administrative or judicial finding on the irregularity was established.
(3) Calculated in accordance with the co-financing rate at the level of the operational programme, as laid down in the financing plan in force at the time of the request.
(4) In addition, when applicable, a copy of the document reducing/cancelling the level of support and /or withdrawing the document setting out the conditions for support referred to in Article 32(3)(c) of Regulation (EU) No 223/2014.
(5) Indicate whether the reason for irrecoverability is bankruptcy of the beneficiary. If not, indicate the applicable reason.
(6) When a request is made that the Union contribution should be borne by the Union budget, the Member State confirms it has exhausted all the recovery possibilities available through its institutional and legal framework.
(7) Legend for the characteristics of fields: type: N=Number, D=Date, S=String, Cu=Currency. B = Boolean — input: M=Manual, S=Selection, G=Generated by system — 'maxlength' = Maximum number of characters including spaces — ATT: Attachments.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1987

of 14 November 2016

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]),

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ([2]), and in particular Article 136(1) thereof,

Whereas:

(1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.

(2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 14 November 2016.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MA	100,9
	ZZ	100,9
0707 00 05	TR	146,7
	ZZ	146,7
0709 93 10	MA	112,1
	TR	142,9
	ZZ	127,5
0805 20 10	MA	88,2
	ZZ	88,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	PE	122,6
	TR	67,2
	ZZ	94,9
0805 50 10	AR	67,2
	CL	69,9
	TR	83,6
	ZZ	73,6
0806 10 10	BR	300,5
	IN	164,3
	PE	292,1
	TR	139,5
	US	334,6
	ZA	345,1
	ZZ	262,7
0808 10 80	CL	174,1
	NZ	139,2
	ZA	122,8
	ZZ	145,4
0808 30 90	CN	104,9
	TR	168,6
	ZZ	136,8

(1) Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2016/1988

of 8 November 2016

amending Implementing Decision 2013/678/EU authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ([1]), and in particular Article 395 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By virtue of Council Decision 2008/737/EC ([2]), Italy was authorised, as a derogating measure, to exempt from value added tax ('VAT') taxable persons whose annual turnover is no higher than EUR 30 000 until 31 December 2010 ('the derogating measure'). The application of the derogating measure was subsequently extended until 31 December 2013 by Council Implementing Decision 2010/688/EU ([3]) and until 31 December 2016 by Council Implementing Decision 2013/678/EU ([4]), which, in addition, increased the maximum authorised exemption threshold to EUR 65 000 of annual turnover.

(2) By letter registered with the Commission on 5 April 2016, Italy requested authorisation to extend the derogating measure.

(3) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 21 June 2016, of the request made by Italy. By letter dated 22 June 2016, the Commission notified Italy that it had all the information necessary to consider the request.

(4) Under Article 285 of Directive 2006/112/EC, Member States that have not made use of Article 14 of the Second Council Directive 67/228/EEC ([5]) may exempt taxable persons whose annual turnover is no higher than EUR 5 000. The derogating measure derogates from Article 285 in its application to Italy only to the extent that the annual turnover threshold exceeds EUR 5 000.

(5) The derogating measure is in line with the objectives of the Commission communication '"Think Small First" — A "Small Business Act" for Europe' of 25 June 2008.

(6) Since the derogating measure has resulted in reduced VAT obligations for those smaller businesses that did not opt for the regular VAT arrangements in accordance with Article 290 of Directive 2006/112/EC, Italy should be authorised to continue to apply the derogating measure for a further limited period. Taxable persons should still be able to opt for the normal VAT arrangements.

([1]) OJ L 347, 11.12.2006, p. 1.
([2]) Council Decision 2008/737/EC of 15 September 2008 authorising the Italian Republic to apply a measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 249, 18.9.2008, p. 13).
([3]) Council Implementing Decision 2010/688/EU of 15 October 2010 authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 294, 12.11.2010, p. 12).
([4]) Council Implementing Decision 2013/678/EU of 15 November 2013 authorising the Italian Republic to continue to apply a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 316, 27.11.2013, p. 35).
([5]) Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ 71, 14.4.1967, p. 1303).

(7) The derogating measure should be limited in time to allow an assessment as to whether it remains appropriate and effective. Moreover, Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises are subject to review. The derogating measure should, therefore, also be subject to a sunset clause.

(8) From information provided by Italy, the derogating measure will have a negligible impact on the overall amount of tax revenue collected at the final stage of consumption.

(9) The derogating measure has no impact on the Union's own resources accruing from VAT.

(10) Implementing Decision 2013/678/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision 2013/678/EU is replaced by the following:

'*Article 2*

This Decision shall take effect on the day of its notification.

This Decision shall apply until the entry into force of a directive amending Articles 281 to 294 of Directive 2006/112/EC on a special scheme for small enterprises, or until 31 December 2019, whichever is the earlier.'.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 8 November 2016.

For the Council
The President
P. KAŽIMÍR

COUNCIL IMPLEMENTING DECISION (EU) 2016/1989

of 11 November 2016

setting out a recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) ([1]), and in particular Article 29 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) In accordance with Article 29 of the Schengen Borders Code, the Council adopted on 12 May 2016 an Implementing Decision setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk.

(2) The Council recommended to five Schengen States (Austria, Germany, Denmark, Sweden and Norway) to maintain proportionate temporary border controls for a maximum period of 6 months as from the day of adoption of the Implementing Decision, to address the serious threat to public policy or internal security posed in these States by the combination of deficiencies in external border control in Greece and the secondary movements of irregular migrants entering via Greece and who intend to move to other Schengen States.

(3) On 28 September 2016, the Commission issued its Report on the implementation of the Implementing Decision. It concluded that the internal border controls carried out by Austria, Germany, Denmark, Sweden and Norway have been proportionate and in line with the Council recommendation. The Commission further concluded that, based on the information available and the reports received from the States concerned, it saw no need for proposing amendments to the Implementing Decision at the time of reporting.

(4) On 18 and 21 October 2016, the Schengen States concerned reported for the second time to the Commission on the implementation of the Council recommendation. The information provided follows a trend similar to the data provided for the first report (reduction in the number of persons to whom entry is refused, as well as in the number of asylum applications received) and thus shows a progressive stabilisation of the situation.

(5) However, despite a sharp drop in the number of arrivals of irregular migrants and asylum-seekers in the European Union, an important number of irregular migrants still remains in Greece as well as in the Member States most affected by the secondary movements of irregular migrants coming from Greece. Based on the trends observed in the past, it is justified to expect that these persons may want to move irregularly to other Member States when the border checks, which hinder their secondary movement, are lifted.

(6) The cumulated number of asylum applications received since the beginning of the migratory crisis and the still incoming applications have put an important strain on the national administrations and services in all EU Member States and specifically in the Schengen States concerned by the Implementing Decision.

(7) Internal border controls cannot be viewed in isolation from other important factors. In its communication 'Back to Schengen — A Roadmap' ([2]), the Commission identified the different policies to be put in place to return to a fully functioning Schengen Area.

([1]) OJ L 77, 23.3.2016, p. 1.
([2]) COM(2016) 120 final.

(8) The roadmap notably included the adoption and the implementation of the European Border and Coast Guard. Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard ([1]) entered into force on 6 October 2016, within a 9 months' time frame since the presentation of the Commission proposal, showing the commitment of all actors involved. It is expected that the rapid reaction pools, covering both human resources and technical equipment, and the rapid return pools will be established and operational by, respectively, 7 December 2016 and 7 January 2017.

(9) Another element identified in the 'Back to Schengen' roadmap is the successful implementation of the EU-Turkey Statement. While the implementation of the Statement, as set out in the third progress report ([2]), continues to deliver results, it is important to continue to ensure that the Statement functions on a sustained basis. Moreover, there remains an ongoing need for the cooperation agreed upon in the Statement of the Western Balkans Route Leaders meeting.

(10) It follows from the above that despite the steady and important progress in the fields identified by the 'Back to Schengen' roadmap and a progressive stabilisation of the situation, these actions still need time to be fully implemented and the corresponding results to be confirmed.

(11) Exceptional circumstances constituting a serious threat to public policy and internal security and putting at risk the overall functioning of the Schengen area therefore still persist.

(12) Given the current fragile situation in Greece and the residue of pressure remaining in the Member States most affected by the secondary movements of irregular migrants coming from Greece, it therefore appears justified to allow a proportionate prolongation of the temporary internal border controls by the Schengen States currently carrying out such controls as a last resort measure in response to a serious threat to their public policy or internal security, namely Austria, Germany, Denmark, Sweden and the associated country Norway, in accordance with Article 29 of the Schengen Borders Code.

(13) Based on the factual indicators available at this stage, this prolongation should not exceed 3 months as from the date of adoption of the present Implementing Decision.

(14) The Member States that decide to continue carrying out internal border control following the present Implementing Decision should notify the other Member States, the European Parliament and the Commission accordingly.

(15) Before opting for such controls, the Member States concerned should examine whether other measures alternative to border controls could not be used to effectively remedy the identified threat. The Member States concerned should inform of the outcome of this reflection and the reasons for opting for border controls in their notifications.

(16) As stated in the European Council conclusions on migration of 20 October 2016, the process of getting 'Back to Schengen' entails adjusting the temporary internal border controls to reflect the current needs. The controls under the present Implementing Decision should be carried out only to the necessary extent, limited in their intensity to the absolute minimum necessary. For example, when during a given period there is an insignificant flow, controls at certain border sections may then not even be necessary. In order to impede as little as possible the crossing of the relevant internal borders for the general public, only targeted, risk analysis and intelligence based controls can take place. Furthermore, the necessity of these controls at the relevant border sections should be examined and re-evaluated regularly in cooperation with all the Member States affected with the objective of progressively reducing them.

(17) At the end of each month of implementation of the present Implementing Decision, a complete report on the results of the checks carried out should be sent to the Commission, together with an assessment of their continuous necessity when applicable. This report should include the total number of persons checked, the total number of refusals of entry following the checks, the total number of return decisions issued following the checks and the total number of asylum applications received at the internal borders where the checks take place.

(18) The Council takes note that the Commission has announced that it will closely monitor the application of this Implementing Decision,

([1]) OJ L 251, 16.9.2016, p. 1.
([2]) Third Report on the Progress made in the implementation of the EU-Turkey Statement (COM(2016) 634).

HEREBY RECOMMENDS:

1. Austria, Germany, Denmark, Sweden and Norway to prolong proportionate, temporary border controls for a maximum period of three months, starting from the day of adoption of this Implementing Decision, at the following internal borders:

   — Austria at the Austrian-Hungarian land border and Austrian-Slovenian land border,

   — Germany at the German-Austrian land border;

   — Denmark in the Danish ports with ferry connections to Germany and at the Danish-German land border,

   — Sweden in the Swedish harbours in the Police Region South and West and at the Öresund bridge,

   — Norway in the Norwegian ports with ferry connections to Denmark, Germany and Sweden.

2. Before prolonging such controls, the Member States concerned should exchange views with the relevant Member State(s) with a view to ensuring that internal border controls are carried out only where it is considered necessary and proportionate. Furthermore, the Member States concerned should ensure that internal border controls are only carried out as a last resort measure when other alternative measures cannot achieve the same effect, and only at those parts of the internal border where it is considered necessary and proportionate, in accordance with the Schengen Borders Code. The Member States concerned should notify the other Member States, the European Parliament and the Commission accordingly.

3. Border control should remain targeted, based on risk analysis and intelligence, and limited in scope, frequency, location and time, to what is strictly necessary to respond to the serious threat and to safeguard public policy and internal security. The Member State that carries out internal border control pursuant to the present Implementing Decision should review weekly the necessity, frequency, location and time of controls, adjust the intensity of the controls to the level of the threat addressed, phasing them out wherever appropriate, and report to the Commission every month.

Done at Brussels, 11 November 2016.

For the Council
The President
P. ŽIGA

COUNCIL DECISION (CFSP) 2016/1990

of 14 November 2016

amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo * (EULEX KOSOVO)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28, Article 42(4) and Article 43(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 4 February 2008, the Council adopted Joint Action 2008/124/CFSP ([1]).

(2) On 14 June 2016, the Council adopted Decision (CFSP) 2016/947 ([2]), which amended Joint Action 2008/124/CFSP, extended the mandate of EULEX KOSOVO until 14 June 2018 and provided a new financial reference amount for the implementation of its mandate in Kosovo until 14 December 2016 and for support to the relocated judicial proceedings within a Member State until 14 June 2017.

(3) A new reference amount should be provided for the implementation of the mandate of EULEX KOSOVO until 14 June 2017.

(4) Nothing in this Decision should be understood as prejudicing the independence and the autonomy of the judges and prosecutors.

(5) Due to the special character of the activities of EULEX KOSOVO in support of the relocated judicial proceedings within a Member State, it is appropriate to identify in this Decision the amount envisaged to cover the support to the relocated judicial proceedings within a Member State and to provide for the implementation of that part of the budget through a grant.

(6) The rules on participation in the Mission's procurement procedures and the rules of origin applicable to the goods that it purchases should be aligned with provisions for other civilian CSDP missions.

(7) Joint Action 2008/124/CFSP should be amended accordingly.

(8) EULEX KOSOVO will be conducted in the context of a situation which may deteriorate and could impede the achievement of the objectives of the Union's external action as set out in Article 21 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Joint Action 2008/124/CFSP is amended as follows:

(1) Article 16 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The financial reference amount intended to cover the expenditure of EULEX KOSOVO until 14 October 2010 shall be EUR 265 000 000.

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 (1999) and the ICJ Opinion on the Kosovo declaration of independence.

([1]) Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (OJ L 42, 16.2.2008, p. 92).

([2]) Council Decision (CFSP) 2016/947 of 14 June 2016 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo (EULEX Kosovo) (OJ L 157, 15.6.2016, p. 26).

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 October 2010 until 14 December 2011 shall be EUR 165 000 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 December 2011 until 14 June 2012 shall be EUR 72 800 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 June 2012 until 14 June 2013 shall be EUR 111 000 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 June 2013 until 14 June 2014 shall be EUR 110 000 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 June 2014 until 14 October 2014 shall be EUR 34 000 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 October 2014 until 14 June 2015 shall be EUR 55 820 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 June 2015 until 14 June 2016 shall be EUR 77 000 000.

The financial reference amount intended to cover the expenditure of EULEX KOSOVO from 15 June 2016 until 14 June 2017 shall be EUR 86 850 000.

Out of the amount referred to in the ninth subparagraph, the amount intended to cover the expenditure of EULEX KOSOVO for the implementation of its mandate in Kosovo shall be EUR 34 500 000 from 15 June until 14 December 2016 and EUR 23 250 000 from 15 December 2016 until 14 June 2017; EUR 29 100 000 shall cover the support to the relocated judicial proceedings within a Member State from 15 June 2016 until 14 June 2017 and shall also retroactively cover expenditure arising from the support to the relocated judicial proceedings as of 1 April 2016. The Commission shall sign a grant agreement with a registrar acting on behalf of a registry in charge of the administration of the relocated judicial proceedings for that amount. The rules on grants provided for in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (*) shall apply to this grant agreement.

The financial reference amount for the subsequent period for EULEX KOSOVO shall be decided by the Council.

(*) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).';

(b) paragraph 2 is replaced by the following:

'2. All expenditure shall be managed in accordance with the rules and procedures applicable to the general budget of the Union. The participation of natural and legal persons in the award of procurement contracts financed out of the Mission's budget shall be open without limitations. Moreover, no rule of origin shall apply for goods purchased by EULEX KOSOVO.';

(c) paragraph 3 is replaced by the following:

'3. Subject to the Commission's approval, the Head of Mission may conclude technical arrangements with EU Member States, participating third States and other international actors deployed in Kosovo regarding the provision of equipment, services and premises to EULEX KOSOVO. The position of contract holder of contracts or under arrangements concluded by EUPT Kosovo for EULEX KOSOVO during the planning and preparation phase shall be transferred to EULEX KOSOVO, as appropriate. Assets owned by EUPT Kosovo shall be transferred to EULEX KOSOVO.'.

(2) In Article 18, paragraph 1 is replaced by the following:

'1. The HR shall be authorised to release to the United Nations, NATO/KFOR, other third parties associated with this Joint Action and Frontex EU classified information and documents generated for the purposes of EULEX Kosovo up to the level of the relevant classification respectively for each of them, in accordance with Decision 2013/488/EU. Local technical arrangements shall be drawn up to facilitate this.'.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 14 November 2016.

For the Council
The President
F. MOGHERINI

COMMISSION DECISION (EU) 2016/1991

of 4 July 2016

on the measures SA.41614 — 2015/C (ex SA.33584 — 2013/C (ex 2011/NN)) implemented by the Netherlands in favour of the professional football club FC Den Bosch in 's-Hertogenbosch

(notified under document C(2016) 4089)

(Only the Dutch text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to Article 108(2) of the Treaty ([1]),

Whereas:

1. PROCEDURE

(1) In 2011, the Commission was informed by a citizen and by reports in the press that the Netherlands had implemented an aid measure for the professional football club FC Den Bosch in 's-Hertogenbosch. In 2010 and in 2011, the Commission was informed by citizens also concerning measures in favour of other professional football clubs in the Netherlands, namely Willem II in Tilburg, MVV in Maastricht, PSV in Eindhoven and NEC in Nijmegen. At the Commission's request, the Netherlands provided information on the measures concerning FC Den Bosch by letter dated 1 September 2011.

(2) By letter dated 6 March 2013, the Commission informed the Netherlands that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty in respect of the measures in favour of Willem II, NEC, MVV, PSV and FC Den Bosch.

(3) The Commission decision to initiate the procedure (hereinafter: 'the opening decision') was published in the *Official Journal of the European Union* ([2]). The Commission invited interested parties to submit their comments on the measures in question.

(4) The Netherlands submitted observations within the framework of the procedure concerning the measures in favour of FC Den Bosch by letters dated 31 May 2013 and 7 November 2013 and in a meeting held on 13 October 2014. The Commission received no comments from interested parties concerning the measures in favour of FC Den Bosch.

(5) Following the opening decision, and in agreement with the Netherlands, the investigations for the different clubs were pursued separately. The investigation concerning FC Den Bosch was registered under the case number SA.41614.

2. DETAILED DESCRIPTION OF THE MEASURES

2.1. Beneficiary, objective and budget

(6) The national football federation Koninklijke Nederlandse Voetbal Bond (hereinafter: 'KNVB') is the umbrella organisation for professional and amateur football competition. Professional football in the Netherlands is organised in a two-tier system. In the 2014/2015 season it consisted of 38 clubs, of which 18 played in the top league (*eredivisie*) and 20 in the lower league (*eerste divisie*).

([1]) Commission Decision in Case SA.33584 (2013/C) (ex 2011/NN) – Netherlands aid to certain professional Dutch football clubs in 2008-2011 – Invitation to submit comments pursuant to Article 108(2) of the Treaty on the Functioning of the European Union (OJ C 116, 23.4.2013, p. 19).

([2]) Cf. footnote 1.

(7) FC Den Bosch has been playing in the lower league since 2004/2005, when it played for the last time in the Dutch top league. It has never played in a European tournament. According to the information submitted by the Netherlands, FC Den Bosch is a small enterprise; in the season 2011/2012 it had 31 employees. Its turnover and balance sheet total remained around EUR 3 million in both years. It is therefore a small enterprise ([3]). The stadium that FC Den Bosch is using, is owned by the municipality of 's-Hertogenbosch (hereinafter: 'the municipality'), which receives a rent for the use by the club.

(8) In 2010, the municipality became aware that FC Den Bosch faced severe financial difficulties, which were threatening the continuation of its licence to play professional football and even its very existence. On 30 June 2010, FC Den Bosch had a negative own equity of EUR 4,6 million; a year later the negative equity was EUR 5,4 million. As evidenced by an independent accounting company, it also had increasing losses (EUR 0,168 million in June 2009, EUR 0,612 million in June 2010 and EUR 0,744 million in June 2011), a diminishing turnover (from EUR 3,736 million to EUR 2,771 million from 2009 to 2011) and mounting debt. One of the club's creditors was the municipality, which had a subordinated claim of EUR 1,65 million.

(9) An initiative to avoid the bankruptcy of FC Den Bosch was launched by supporters, companies and sponsors in the autumn of 2010. This initiative led to a restructuring plan to improve FC Den Bosch's financial situation and to transform it into a viable professional football club with a new legal structure, to be owned by its supporters. In June 2011, the municipality and the other creditors of the club agreed on a joint initiative to swap their loans into shares of the club. As part of the restructuring, FC Den Bosch, which had the legal status of an association (*Vereniging*), was transformed on 30 June 2011 into the limited liability company (*naamloze vennootschap*) FC Den Bosch N.V.

(10) It was agreed that the claim of the municipality would be transformed into a shareholding of 60 % of the shares of the new limited liability company FC Den Bosch N.V. The remaining 40 % of the club's shares would be acquired by the other large creditors of the club which swapped debts for equity, but with a lower debt-share ratio than the municipality. Smaller creditors waived parts of their claims. Following this agreement among the creditors, the municipality transferred its claim for equity resulting from its loan of EUR 1,65 million for EUR 1 to the foundation *Stichting Met Heel Mijn Hart*. The foundation has been formed by supporter clubs and individual supporters of FC Den Bosch and is not pursuing any commercial activity.

(11) The municipality also agreed to pay a sum of EUR 1,4 million for FC Den Bosch leaving the training facilities ([4]), which were located on land owned by the municipality.

2.2. **Grounds for initiating the procedure**

(12) In the opening decision, as far as the measures in favour of FC Den Bosch are concerned, the Commission arrived at the preliminary conclusion that the municipality had provided a selective advantage to FC Den Bosch with the use of State resources and had, hence, provided aid to the football club.

(13) As regards the decision to sell the claim of EUR 1,65 million for EUR 1 to organised supporters, the Commission found that the Netherlands could not argue that the municipality acted in the way a private creditor in a similar position would have done. The Commission noted that other large creditors transformed their claims into shareholdings in the new legal structure, whereas the municipality sold its claims for nought. As regards the acquisition of the training and youth block for EUR 1,4 million, the Commission noted that this price was estimated by an outside expert as being the replacement value for the block. It doubted that the replacement value of a building is the same thing as its market price.

(14) The Commission also took the position that aid measures to professional football clubs are likely to distort competition and to affect trade between Member States within the meaning of Article 107(1) of the Treaty.

([3]) Article 2(2) of the Annex to the Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, (OJ L 124, 20.5.2003, p. 36) (a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover does not exceed EUR 10 million).

([4]) Located at Jan Sluyterstraat in 's-Hertogenbosch.

(15) Regarding the compatibility of a possible aid to FC Den Bosch, the Commission noted in the opening decision that the football club had been in financial difficulties at the time the aid was awarded. In order to assess the compatibility of the aid with the Guidelines on State aid for rescuing and restructuring of firms in difficulty ([5]) (hereinafter: 'the Guidelines'), the Commission requested information on the compliance with all requirements set out in the Guidelines.

(16) The Commission was notably unable to verify whether the conditions in points 34 to 37 of the Guidelines concerning the nature and fulfilment of a restructuring plan had been respected. It furthermore needed to be demonstrated that the aid had been limited to the minimum necessary, that the beneficiary itself had paid an adequate own contribution to its restructuring and that the 'one time last time' principle would be respected.

3. COMMENTS FROM THE NETHERLANDS

3.1. Presence of State aid according to Article 107(1) of the Treaty

(17) The Netherlands disagrees with the Commission's preliminary finding that the measures with regard to FC Den Bosch constitute State aid. In the view of the Netherlands, the municipality, having a subordinated claim on a company on the brink of bankruptcy, acted in conformity with the market economy creditor principle by waiving its claim in 2011.

(18) According to the Netherlands, in the case of bankruptcy of FC Den Bosch, the municipality would in all likelihood not have recovered anything of its subordinated claim. In their letter dated 7 November 2013, the Netherlands also invoked the decision of the Commission concerning the Belgian company Sonaca ([6]), in which it found that the swap of a public loan into equity did not constitute State aid. If FC Den Bosch had not been able to redress its financial situation in June 2011, it would have lost its licence to play professional football according to the rules of the KNVB. As regards the acquisition of the training facilities, the Netherlands argues that this acquisition took place at the value established by an external expertise, which also covered the cost of replacement for FC Den Bosch. The Netherlands claims that it acted in conformity with the Commission Communication on land sales ([7]) (hereinafter: 'the land sales Communication').

(19) Alternatively, the Netherlands argues that even if the measures were to be considered as having provided a selective advantage to FC Den Bosch, they would not distort competition or affect trade between Member States. The Netherlands emphasises the weak position of FC Den Bosch in national professional football, which makes participation in competitions at European level a very unlikely event. It also considers that the Commission has failed to demonstrate that aid to FC Den Bosch would distort competition or affect trade in any of the markets mentioned in the opening decision.

(20) As a subsidiary argument, the Netherlands states that if the measures were to be considered to constitute State aid, they would be compatible with the Guidelines and, hence, with the internal market.

(21) FC Den Bosch was in a difficult financial situation in 2010. In 2011, it had a negative own equity with debts of EUR 5,97 million and debts of EUR 7 million, with a turnover of around EUR 3 million. The club had the creditors and debts as shown in Table 1.

Table 1

Creditors and debts of FC Den Bosch

Creditors	Loan amounts
The municipality (the balance of a loan granted in 2000)	EUR 1,65 million
[…] (*)	EUR 1,092 million

([5]) Communication from the Commission - Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2); the application of those guidelines was prolonged by the Commission Communication concerning the prolongation of the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty of 1 October 2004 (OJ C 296, 2.10.2012, p. 3).
([6]) Case SA.35131 (2013/N).
([7]) Commission Communication concerning aid elements in land sales by public authorities (OJ C 209, 10.7.1997, p. 3).
(*) Confidential information.

Creditors	Loan amounts
[…]	EUR 1,865 million
[…]	EUR 0,73 million
[…]	EUR 0,235 million
A private creditor	EUR 0,3 million
[…]	EUR 0,1 million

(22) The KNVB indicated that the club would lose its professional football licence if the own equity would still be negative by 30 June 2011. This would mean that the club would be relegated to amateur status.

(23) Therefore FC Den Bosch and the KNVB elaborated in June 2011 a restructuring plan. According to the plan, the club was transformed in a limited company (NV). The (unsecured) debts of the various larger creditors were transformed into shares of the club as set out in Table 2.

Table 2

Debt-equity-swap ratios

Creditor	Loan	Shares/percentage	EUR/share
The municipality/foundation *Stichting Met Heel Mijn Hart*	EUR 1,65 million	61 900/54,3	26,7
[…]	EUR 1,092 million	20 492/18	53,3
[…]	EUR 1,865 million	27 925/24,5 11 000 thereof are preferential shares	66,8
[…]	EUR 0,73 million	3 583/3,1	203,7

(24) The remaining 0,1 % of the shares was distributed to senior members of the football club. This shows that the municipality negotiated to receive 54 % of the shares in the club for a share of 38 % in the debts of the club.

(25) Furthermore, a commercial loan of EUR 100 000 was supported by a guarantee from a third party; other private parties provided fresh capital of EUR 300 000. A short term loan of EUR 250 000 was transformed into a long term loan. The debts to the municipal stadium operating company BIM for stadium rent are secured by a right of BIM to seize TV transmission rights income.

(26) The municipality considered its loan of EUR 1,65 million as non-recoverable. Already in the 2010 budget of the municipality the loan was marked as non-recoverable because FC Den Bosch did not make payments anymore on it. In June 2011, the municipality asked the accounting company Ernst & Young, which had analysed the financial situation of FC Den Bosch already in February and March 2011, to assess the recoverability of the loan to FC Den Bosch. It found that for the coming years, one could not reasonably expect a repayment of the loan or payments of interest, even if the club was restructured due to the waiving of the long term debts by its larger creditors. This finding makes also sense if one considers that the club has no real estate property or machinery which could be sold or liquidated for repaying debts.

(27) The municipality decided in the context of the agreement between the creditors to transfer its claim for 54 % of the shares for EUR 1 to the foundation *Met Heel Mijn Hart*. By doing so, the foundation became shareholder of the club — instead of the municipality which expressed no interest in being involved in the management of the club - in the same way as the other large creditors, and as agreed with them and the municipality in the restructuring agreement. The foundation will sell on the basis of these shares certificates for EUR 100.

(28) Compared to the other creditors, the particular, greater interest of the municipality in avoiding a liquidation of the club or its relegation to amateur status was that it would lose, at least for some time, the principal user and rent fee payer of its stadium. In that respect it was in the economic interest of the municipality to have the club to continue playing professional football.

(29) Regarding the ground under the training complex, an area of 36 000 m^2, the information submitted by the Netherlands shows that the ground was already owned by the municipality. It was in use by FC Den Bosch, which had constructed the sport complex with buildings and sport fields at its own expense in the year 2000 and modified in 2006 and 2007. There was no long leasehold (*erfpacht*) ([8]) between the municipality and FC Den Bosch. The municipality could realise on this property the building of houses and apartments. Therefore it had in any case an interest for the club to leave the premises and seized the opportunity opened by the liquidity needs of the club. Therefore it intended to compensate the club for the vacation of the premises like in the case of an uncontested expropriation of buildings and asked for a valuation of the buildings and installations on the ground on the basis of the Dutch law on expropriations for such a case.

(30) This price for the acquisition was determined by a valuation of the sport complex by an independent acknowledged land taxation expert. The valuation was based on the adjusted replacement value, which is described as the amount necessary to obtain objects of the same value in terms of type, quality, state and age. This amount is therefore not just the value of the sport complex in its given size. It is adjusted according to its technical state and its age. Such valuation is imposed by Article 40b, paragraph 3 of the Dutch expropriation law (*Onteigeningswet*) for cases of consensual expropriation, which was, according to the Netherlands, applicable to the situation at hand. Therefore, the Netherlands considers that the Commission was not correct in considering that the valuation report referred just to the replacement value as basis for the valuation. In the Dutch valuation practice, unconventional objects, like churches, monuments, or sport complexes, are valued at the adjusted replacement value, described as the price an independent buyer would be willing to pay for in the case of an expropriation or relocation of the actual owner.

(31) Regarding the Commission's observation that the value determined by the valuation was higher than the book value in the accounts of FC Den Bosch, the Netherlands states that the book value of a piece of land or buildings is usually not reflecting its actual market value. It is determined by various other factors than its value in a commercial transaction, like the historical acquisition price or the depreciation.

(32) The club continued its training activities elsewhere, in the stadium and in another football training complex in the town which still had spare capacity. The Netherlands argues that the price of the training complex was determined without regard to the possible financing needs of FC Den Bosch. A part of the amount received for leaving its training complex was used by the club to accommodate the alternative training facilities. This income was also used to pay the stadium rent debts to BIM.

3.2. **Compatibility of the State aid under Article 107(3)(c) of the Treaty**

(33) Alternatively, the Netherlands argued that even if the measure were to constitute aid, it would be compatible with the internal market. Regarding the restructuring of FC Den Bosch, the Netherlands described the financial situation of the club as set out in recital 8.

(34) Each Dutch professional football club needs a licence from the KNVB, which it receives only if it complies with various obligations. One of the obligations under the system relates to the financial health of the club. If it is insufficient, the KNVB may withdraw the licence. If a successor club is founded, it would not be admitted to the professional football leagues directly, but it would have to start in the second-highest amateur league. With its difficulties, Den Bosch risked to lose its licence to participate in professional competitions.

([8]) Under Article 5:85 of the Dutch Civil Code, *erfpacht* (long leasehold) is a limited property right which gives its proprietor, the 'leaseholder', the right to hold and use an immovable thing of someone else.

(35) The Netherlands advised that in view of these difficulties the decision of the municipality to waive a loan and to compensate FC Den Bosch for the vacation of the training complex used by it was subordinated to a number of conditions set out in the restructuring plan agreed between the municipality, the other creditors and FC Den Bosch.

(36) The restructuring plan entailed a new legal structure for FC Den Bosch. It was transformed from a club into a limited company (*naamloze vennootschap* (NV)), cuts in staff and in the group of players. It foresaw that the number of contract players is reduced to the minimum imposed by the KNVB of 16. FC Den Bosch will not buy players on the transfer market but only contract freely transferable players. This entailed a reduction of cost of personnel and players of 17 %.

(37) As set out in recital 22, the creditors of FC Den Bosch waived debts of altogether EUR 5,337 million for equity. Furthermore the municipality compensated the club for leaving the training complex it had used so far with an amount of EUR 1,4 million. With these measures, the negative equity of the club was turned into a moderate positive equity of EUR 0,63 million which allowed its transformation in a limited company.

(38) The plan was designed to lead to a stable financial position over a period of 3 years. It foresaw decreasing losses in the financial year 2011/2012 and 2012/2013 and a small profit of EUR 0,1 million for the financial year 2013/2014. This wouldn't leave room for FC Den Bosch to acquire transfer players. In fact, FC Den Bosch was able to realise in the accounting year 2011/2012 a moderate profit of EUR 0,103 million, also due to better than predicted sponsoring contracts.

4. **ASSESSMENT OF THE MEASURES**

4.1. **Presence of State aid according to Article 107(1) of the Treaty**

(39) According to Article 107(1) of the Treaty, State aid is aid awarded by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods in so far as it affects trade between Member States. The conditions laid down in Article 107(1) of the Treaty are cumulative and therefore for a measure to be qualified as State aid all the conditions must be fulfilled.

(40) On the basis of the opening decision, the Commission will assess the decision of the municipality of 21 June 2011 to waive a subordinated claim of EUR 1,65 million on FC Den Bosch and to compensate FC Den Bosch with EUR 1,4 million for leaving its training facilities. The Commission notes that both actions were presented together and were decided in the same meeting of the municipal council and that they are closely linked as regards their purpose and the situation of FC Den Bosch at the time.

(41) Consequently, these two measures should be assessed together ([9]). In the present case, however, it is clear from the assessment which follows that both measures constitute State aid when considered separately. This necessarily implies that the measures also constitute State aid when assessed together as a single measure.

4.1.1. *Use of State resources*

(42) Both measures were decided by the municipality and they have financial consequences for this municipality amounting to EUR 3,1 million. They thus involve the use of State resources and are imputable to the State. The transfer of State resources may take many forms, such as direct grants, loans, guarantees, direct investment in the capital of enterprises and benefits in kind. Waiving claims of the State also constitutes a transfer of State resources.

4.1.2. *Selective advantage for FC Den Bosch*

(43) Whenever the financial situation of an undertaking is improved as a result of State intervention, an advantage is present. To assess this, the financial situation of the undertaking following the measure should be compared with its financial situation if the measure had not been introduced. It is undisputed that FC Den Bosch's difficult financial situation improved markedly through the measures under investigation.

([9]) Case T-11/95 *BP Chemicals* v *Commission* EU:T:1998:199, paragraphs 170 ff; Case C-399/10 P and C-401/10 P *Bouygues and Bouygues Télécom* v *Commission and Others* EU:C:2013:175, paragraphs 103-104; and Case T-1/12 *France* v *Commission* EU:T:2015:17, paragraph 37.

(44) An advantage, within the meaning of Article 107(1) of the Treaty, is any economic benefit which an undertaking would not have obtained under normal market conditions ([10]), i.e. in the absence of State intervention which is not guided by commercial principles.

(45) The Netherlands claims that the improvement of the financial situation of FC Den Bosch is the result of market conform transactions and therefore not undue. According to the Netherlands, the municipality acted in compliance with the *market economy investor principle* (hereinafter: 'MEIP').

4.1.2.1. The waiver of the subordinated claim

(46) As set out above, the decision to waive the subordinated claim of EUR 1,65 million involves a debt-to-equity swap, followed by a transfer of the resulting claim for equity for EUR 1.

(47) It therefore first needs to be determined whether a private creditor would have swapped debts for equity in the same way as the municipality. In the case of an undertaking that fulfils the conditions for bankruptcy, a private creditor has two options. It may proceed to the liquidation of the undertaking with a view to recover at least a part of its loan, or it may convert the loan in shares to allow the undertaking to continue operating, with a perspective to become profitable again, so that the shares increase their value. If private creditors acted in the same way as the municipality, and for a significant part of the debts of FC Den Bosch, one could assume that the behaviour of the municipality follows the MEIP.

(48) Respect of the MEIP may be established where a transaction is carried out under the same terms and conditions (and therefore with the same level of risk and rewards) and at the same time by public bodies and private operators who are in a comparable situation (a *pari passu* transaction). In this case it can normally be inferred that such a transaction is in line with market conditions ([11]). It is also of importance whether the intervention of the private operators has real economic significance and is not merely symbolic or marginal ([12]) and whether the starting position of the public entities and the private operators involved is comparable with regard to the transaction. On the other hand, if public bodies and private operators who are in a comparable situation take part in the same transaction at the same time but under different terms or conditions, this normally indicates that the intervention of the public body is not in line with market conditions.

(49) In the case under consideration, the starting position of the public entities and the private operators involved was comparable with regard to the transaction. All creditors involved in the transaction held unsecured and non-recoverable loans. The private sector involvement was also significant. However, the other operators are not simple market operators, as already pointed out; it seems all of them are linked in one way or another to the club. Hence it cannot be assumed that they acted with a view to making a profit; supporters for instance are not rational market operators seeking profit.

(50) It is also apparent that the transaction took place under different terms or conditions. The municipality asked for more in return to its debt waiver than the other creditors. It received, as shown in Table 2, with one share per EUR 26,7 relatively more shares than all other commercial or non-profit creditors. Furthermore, the debt restructuring enabled FC Den Bosch to pay stadium rent arrears to the stadium operating company BIM which is owned by the municipality. On the other hand, the creditor […] received preferential shares which may give it a priority to receive possible later dividends. This means that it is not excluded that at least one private actor obtained better conditions than the municipality. The evidence does not allow the conclusion that the municipality acted *pari passu* with market economy operators in agreeing to the swap.

(51) It is also unlikely that a private investor would have agreed to sell its non-recoverable loan which is swapped into equity for a price of EUR 1 to a foundation which plans to sell certificates for these shares for EUR 100 per share. By not keeping the shares, the municipality rid itself of the only commercial reason for a debt equity swap,

([10]) Case C-39/94 *SFEI and Others*, ECLI:EU:C:1996:285, point 60; Case C-342/96 *Spain* v *Commission*, ECLI:EU:C:1999:210, point 41.
([11]) See, in that regard, Case T-296/97 *Alitalia* v *Commission*, ECLI:EU:T:2000:289, point 81.
([12]) For instance, in the Citynet Amsterdam case, the Commission considered that two private operators taking up one-third of the total equity investments in a company (considering also the overall shareholding structure and that their shares are sufficient to form a blocking minority regarding any strategic decision of the company) could be considered economically significant (see Commission Decision 2008/729/EC of 11 December 2007 on the State aid Case C53/06 (ex N 262/05, ex CP 127/04), investment by the city of Amsterdam in a fibre-to-the-home (FttH) network (OJ L 247, 16.9.2008, p. 27), recitals 96-100).

the — although distant — hope or expectation to see the shares assume value. It gave a third party the opportunity to collect funds by selling share certificates instead of doing it itself or at least requiring to have a share in the sales income ([13]). In that case the State kept its shares and could reasonably expect a profit in the future.

(52) Therefore, the waiver of the subordinated debt cannot be likened to the behaviour of a rational market operator and it conferred an advantage to FC Den Bosch which it could not have obtained on market terms.

4.1.2.2. The acquisition of the training complex

(53) Regarding the training complex, the Netherlands claims that the compensation of EUR 1,4 million was calculated in line with the land sales Communication and Commission decisions regarding the compensation of replacement cost and, hence, did not provide an advantage to FC Den Bosch. According to that Communication, a sale of land and buildings by a public authority does not constitute aid, first, where the public authority accepts the highest or only bid following an unconditional bidding procedure and, second, where in the absence of such a bidding procedure the sales price is set at least at the value established by an independent expert evaluation.

(54) The guidance provided by the land sales Communication, as stated in its introduction, only 'concerns sales of publicly owned land and buildings. It does not concern the public acquisition of land and buildings or the letting or leasing of land and buildings by public authorities. Such transactions may also include State aid elements.'

(55) In any case, the mechanisms set out in the land sales Communication are only tools to establish whether the State acted as a market economy investor and are therefore specific examples for the application of the MEIP test to land transactions between public and private entities ([14]). It is therefore not relevant if the assessment of the land evaluation and acquisition is made under the land sales Communication or without reference to it.

(56) In the case of the sport complex that FC Den Bosch liberated, the land valuation, exercised by an independent expert, was based on the adjusted replacement value. According to the explanations of the Netherlands, this is the value the State would have to pay in case of the relocation of the owner, based on the legal rules for evaluating property subject to an uncontested expropriation exercise. This is not convincing. The buildings and installations of the complex, which were constructed by FC Den Bosch, were already the property of the municipality. FC Den Bosch used them without a long leasehold. The valuation should therefore not have taken place on the basis of a scenario where FC Den Bosch would have been the owner of the buildings. Moreover, the adjusted replacement value may well differ from the market value of an asset.

(57) It also does not appear that the municipality had specific plans for that land at the moment of the transaction. The transaction was clearly a part of the restructuring measures decided by the municipality and had the apparent principal objective to provide FC Den Bosch with liquidity. It is unlikely that the municipality would have entered into this exercise at that point in time without that objective. It could also be argued that with the disappearance of the football club in case of bankruptcy the sport complex would have been liberated without any indemnity.

(58) Therefore it has to be doubted that another market operator could have convinced the municipality to disburse EUR 1,4 million to liberate a property for which this operator did not even have a long leasehold. In any case the amount would have been much lower.

4.1.2.3. Conclusion on the existence of a selective advantage

(59) The measures therefore confer a selective advantage on FC Den Bosch within the meaning of Article 107(1) of the Treaty.

([13]) Therefore the debt waiver by the municipality cannot be compared with the decision of the Commission concerning the Belgian company Sonaca in Case SA.35131 (2013/N).

([14]) According to this test, no State aid would be involved where, in similar circumstances, a private investor, operating in normal market conditions in a market economy, could have been prompted to provide to the beneficiary the measures in question.

4.1.3. *Effect on trade and competition*

(60) The Netherlands has questioned the impact of possible aid on the internal market for clubs not playing football at European level. However, professional football clubs are considered to be undertakings and are subject to State aid control. Professional football offers gainful employment and provides services for remuneration; it has developed a high level of professionalism and thereby increased its economic impact ([15]).

(61) Although FC Den Bosch does not participate in football competitions which have an international dimension, as a professional football club it deploys economic activities in several other markets, such as the transfer market for professional players, publicity, sponsorship, merchandising or media coverage. Aid to a professional football club strengthens its position on each of those markets, most of which cover several Member States. Therefore, if State resources are used to provide a selective advantage to a professional football club, regardless of the league in which it plays, such aid is likely to have the potential of distorting competition and to affect trade between Member States within the meaning of Article 107(1) of the Treaty ([16]).

4.2. **Assessment under Article 107(3)(c) of the Treaty**

(62) The Commission must assess whether the aid measure in favour of FC Den Bosch can be considered to be compatible with the internal market. None of the derogations mentioned in Article 107(2) of the Treaty applies to the aid measure in question. As regards the derogations provided for in Article 107(3) of the Treaty, the Commission notes that none of the Dutch regions falls under the derogation in Article 107(3)(a) of the Treaty. The aid measure in question does not promote an important project of common European interest, nor does it serve to remedy any serious disturbance in the Dutch economy within the meaning of Article 107(3)(b) of the Treaty. The aid measure can also not be said to promote culture or heritage conservation within the meaning of Article 107(3)(d) of the Treaty.

4.2.1. *Applicable guidelines*

(63) As regards the derogation in Article 107(3)(c) of the Treaty in favour of aid to facilitate the development of certain economic activities, such aid could be compatible where it does not adversely affect trading conditions to an extent contrary to the common interest.

(64) For its assessment of aid measures under Article 107(3)(c) of the Treaty, the Commission has issued a number of Regulations, Frameworks, Guidelines and Communications concerning aid forms and horizontal or sector purposes for which aid is awarded. Given that FC Den Bosch faced financial difficulties at the time the measures were taken and that the aid was awarded by the municipality to address those difficulties, it is appropriate to assess whether the criteria laid down in the Guidelines ([17]) apply and are fulfilled.

(65) In July 2014, the Commission published new Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ([18]). They are, however, not applicable to this non-notified aid granted in 2011. According to point 137 of the new guidelines, this would only be the case for any rescue or restructuring aid granted without prior authorisation if some or all of the aid is granted after the publication the publication of those guidelines in the *Official Journal of the European Union*. According to point 138 of the new guidelines, in all other cases the Commission will conduct the examination on the basis of the guidelines which applied at the time the aid was granted, and therefore, in the present case, those applicable before 2014.

([15]) Case C-325/08 *Olympique Lyonnais* ECLI:EU:C:2010:143, points 27 and 28; Case C-519/04 P *Meca-Medina and Majcen* v *Commission* ECLI:EU:C:2006:492, point 22; Case C-415/93 *Bosman* ECLI:EU:C:1995:463, point 73.

([16]) Commission Decisions regarding Germany of 20 March 2013 on *Multifunktionsarena der Stadt Erfurt* (Case SA.35135 (2012/N)), point 12, and *Multifunktionsarena der Stadt Jena* (Case SA.35440 (2012/N)), summary notices in OJ C 140, 18.5.2013, p. 1, and of 2 October 2013 on *Fußballstadion Chemnitz* (Case SA.36105 (2013/N)), summary notice in OJ C 50, 21.2.2014, p. 1, points 12-14; Commission Decisions regarding Spain of 18 December 2013 on possible State aid to four Spanish professional football clubs (Case SA.29769 (2013/C)), point 28, Real Madrid CF (Case SA.33754 (2013/C)), point 20, and alleged aid in favour of three Valencia football clubs (Case SA.36387 (2013/C)), point 16, published in OJ C 69, 7.3.2014, p. 99.

([17]) See recital 15 and footnote 5.

([18]) Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

4.2.2. *FC Den Bosch as company in difficulty*

(66) According to point 11 of the Guidelines, a company may be considered to be in difficulty where the usual signs of a firm being in difficulty are present, such as increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, or mounting debt. As set out in recital 8, several of these signs are present for FC Den Bosch. Therefore it was a company in difficulty and the compatibility of the State aid will be assessed under the Guidelines.

4.2.3. *Restoration of long term viability*

(67) In section 3.2, the Guidelines require that the grant of the aid must be conditional on the implementation of a restructuring plan. As pointed out in recital 7, FC Den Bosch qualifies as small enterprise. According to point 59 of the Guidelines, the Commission notes that the Netherlands has communicated a restructuring plan which addresses the conditions set out in points 34 to 37 of the Guidelines.

(68) In this regard, the Commission notes that the decision of the municipality to waive its loan to FC Den Bosch and pay it for liberating its sport complex followed an analysis on the nature and the causes of the difficulties of FC Den Bosch. The grant was subordinated to a number of conditions which aim at restoring the long-term viability of the firm within a reasonable time-scale of 3 years and at meeting the requirements of the KNVB to continue licensing FC Den Bosch for professional competitions. The restructuring plan entailed a new management, cuts in staff and in the group of players. It covers the abandonment of a large training complex. Thus FC Den Bosch envisages savings on its core activity. The restructuring plan does not rely on external factors which FC Den Bosch can pursue but not entirely control, such as finding new sponsors and an increase in the number of spectators. The continued improvement of the financial situation of the club is envisaged as well as its continued operation as a professional football club. The development as set out in recital 35 shows that the plan was indeed realistic.

4.2.4. *Compensatory measures*

(69) Points 38 to 42 of the Guidelines require that compensatory measures be taken by the beneficiary in order to minimise the distortive effect of the aid and its adverse effects on trading conditions. However, this condition does not apply to small enterprises. As set out in recital 7, FC Den Bosch is a small enterprise.

4.2.5. *Aid limited to a minimum*

(70) The Commission also notes that the restructuring plan is to a considerable extent financed by external private entities in addition to the internal savings made, in accordance with points 43 and 44 of the Guidelines. Several private entities had agreed to waive their debts as well. The overall contribution of the creditors and the municipality to the refinancing of FC Den Bosch was EUR 6,737 million (EUR 5,337 million of waived debts plus EUR 1,4 million for the training complex, if the entire amount for the training complex would be counted as aid). The 25 % of own contribution required for small enterprises would be EUR 1,685 maximum. Other entities than the State contributed EUR 3,687 million in the form of waiving their debts (EUR 5,337 million minus the municipality's loan of EUR 1,65 million), among them one commercial undertaking an amount of EUR 1,865 million, which is more than the required 25 %.

(71) The amount of the aid was necessary. According to the restructuring plan it should lead to smaller losses in the 2011/2012 and 2012/2013 seasons and moderate positive result later. This would not have allowed FC Den Bosch to buy new players or attract them with higher salaries.

4.2.6. *Monitoring and annual report*

(72) Point 49 of the Guidelines requires that the Member State communicates on the proper implementation of the restructuring plan through regular detailed reports. Point 51 sets out less stringent conditions for SMEs, where the transmission of yearly copies of the balance sheet and profit-and-loss accounts is normally considered sufficient. The Netherlands has committed to submit these reports.

4.2.7. *One time, last time*

(73) In accordance with points 72 to 77 of the Guidelines, the Netherlands specified that FC Den Bosch did not receive rescue or restructuring aid in the 10 years before the grant of the present aid. It also committed not to award any new rescue or restructuring aid to FC Den Bosch during a period of 10 years.

4.3. **Conclusion**

(74) The Commission therefore concludes that the debt restructuring measures regarding FC Den Bosch constitute State aid within the meaning of Article 107(1) of the Treaty. However, the restructuring aid granted by the municipality to FC Den Bosch fulfils the conditions of the Guidelines and does therefore not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the aid is compatible with Article 107(3)(c) of the Treaty.

5. **CONCLUSION**

(75) The Commission finds that the Netherlands has unlawfully implemented the aid to FC Den Bosch in breach of Article 108(3) of the Treaty. However, the State aid awarded to FC Den Bosch in 2011 amounting to EUR 1,65 million in form of a debt waiver and of EUR 1,4 million paid in consideration for leaving its training complex meets the conditions for restructuring aid in the Guidelines and can be considered compatible with the internal market in accordance with Article 107(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which the Netherlands has implemented in favour of the football club FC Den Bosch in 's-Hertogenbosch, amounting to EUR 3,05 million, is compatible with the internal market within the meaning of Article 107(3)(c) of the Treaty on the Functioning of the European Union.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 4 July 2016.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2016/1992

of 11 November 2016

amending Implementing Decision (EU) 2015/2416 recognising certain areas of the United States of America as being free from *Agrilus planipennis* Fairmaire

(notified under document C(2016) 7151)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ([1]), and in particular points 2.3, 2.4 and 2.5 of Section I of Part A of Annex IV thereto,

Whereas:

(1) Commission Implementing Decision (EU) 2015/2416 ([2]) recognised certain areas of the United States of America as being free from *Agrilus planipennis* Fairmaire.

(2) Recent information submitted by the United States of America shows that certain areas of their territories currently recognised as being free from *Agrilus planipennis* Fairmaire are now no longer free from that harmful organism.

(3) Moreover the United States of America has submitted information indicating that the Chester county in Tennessee is free from that harmful organism.

(4) In view of that information, the respective list of areas recognised as being free from that harmful organism should be amended.

(5) Implementing Decision (EU) 2015/2416 should therefore be amended accordingly.

(6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Implementing Decision (EU) 2015/2416 is amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 11 November 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

([1]) OJ L 169, 10.7.2000, p. 1.
([2]) Commission Implementing Decision (EU) 2015/2416 of 17 December 2015 recognising certain areas of the United States of America as being free from *Agrilus planipennis* Fairmaire (OJ L 333, 19.12.2015, p. 128).

ANNEX

LIST OF AREAS, AS REFERRED TO IN ARTICLE 1

The Annex to Implementing Decision (EU) 2015/2416 is amended as follows:

(1) in point 2(f), Counties (Parishes) in Louisiana, the following entries are deleted: Caldwell, Franklin, Winn;

(2) in point 2(h), Counties in Minnesota, the following entry is deleted: Wabasha;

(3) in point 2(i), Counties in Nebraska, the following entries are deleted: Antelope, Boone, Burt, Butler, Cedar, Colfax, Cuming, Dakota, Dixon, Dodge, Fillmore, Gage, Hamilton, Jefferson, Lancaster, Madison, Merrick, Nance, Platte, Polk, Saline, Saunders, Seward, Stanton, Thurston, York;

(4) in point 2(l), Counties in Tennessee, the following entry is inserted before Crockett: Chester;

(5) in point 2(m), Counties in Texas, the following entries are deleted: Anderson, Camp, Cherokee, Delta, Franklin, Gregg, Henderson, Hopkins, Lamar, Morris, Nacogdoches, Rains, Red River, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt, Wood.

GUIDELINES

GUIDELINE (EU) 2016/1993 OF THE EUROPEAN CENTRAL BANK

of 4 November 2016

laying down the principles for the coordination of the assessment pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council and the monitoring of institutional protection schemes including significant and less significant institutions (ECB/2016/37)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ([1]), and in particular Article 4(3) and Article 6(1) and (7) thereof,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([2]), and in particular Articles 8(4), 49(3), 113(7), 422(8) and 425(4) thereof,

Having regard to Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions ([3]), and in particular Article 29(1), Article 33(2)(b) and Article 34(1) thereof,

Whereas:

(1) An institutional protection scheme (IPS) is referred to in Regulation (EU) No 575/2013 as a contractual or statutory liability arrangement which protects its member institutions and in particular ensures that they have the liquidity and solvency needed to avoid bankruptcy where necessary. Competent authorities may, in accordance with the conditions laid down in Articles 8(4), 49(3), 113(7), 422(8) and 425(4) of Regulation (EU) No 575/2013 and Article 29(1), Article 33(2)(b) and Article 34(1) of Delegated Regulation (EU) 2015/61, waive certain prudential requirements or allow certain derogations for IPS members. In addition, Article 113(7)(i) of Regulation (EU) No 575/2013 provides that the relevant competent authority must approve and monitor at regular intervals the adequacy of the IPS's systems for the monitoring and classification of risk and Article 113(7)(d) requires the IPS to conduct its own risk review.

(2) Decisions by competent authorities to grant permissions and waivers within the meaning of Articles 8(4), 49(3), 113(7), 422(8) and 425(4) of Regulation (EU) No 575/2013 and Article 33(2)(b) of Delegated Regulation (EU) 2015/61 and any decisions resulting from the monitoring of IPSs are directed at individual credit institutions. As such, the European Central Bank (ECB), as the competent authority for the prudential supervision within the Single Supervisory Mechanism (SSM) of credit institutions that are classified as significant in accordance with Article 6(4) of Regulation (EU) No 1024/2013 and Part IV and Article 147(1) of Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ([4]), is responsible for the assessment of applications submitted by significant credit institutions and the monitoring of IPSs that include them, while the national competent authorities (NCAs) are responsible for the assessment of applications submitted by less significant credit institutions and the monitoring of IPSs that include them.

([1]) OJ L 287, 29.10.2013, p. 63.
([2]) OJ L 176, 27.6.2013, p. 1.
([3]) OJ L 11, 17.1.2015, p. 1.
([4]) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

(3) To ensure consistent treatment of significant and less significant credit institutions which are members of IPSs across the SSM and foster consistency in decisions adopted by the ECB and the NCAs, the ECB adopted Guideline (EU) 2016/1994 of the European Central Bank (ECB/2016/38) [1]. However, it is necessary to establish a coordinated process for decisions relating to members of the same IPS that consist of both significant and less significant credit institutions, and for the ECB and the NCAs to take a coordinated approach to the monitoring of that IPS, to ensure consistency between decisions taken in relation to significant and less significant credit institutions that are members of the same IPS,

HAS ADOPTED THIS GUIDELINE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Guideline lays down the principles for coordination between the ECB and the NCAs with regard to the assessment of IPSs for the purpose of granting prudential permissions and waivers to IPS members, pursuant to Articles 8(4), 49(3), 113(7), 422(8) and 425(4) of Regulation (EU) No 575/2013 and Article 33(2)(b) of Delegated Regulation (EU) 2015/61, and to the monitoring of IPSs that have been recognised for prudential purposes.

2. The coordination process is without prejudice to the ECB's responsibility for adopting all relevant prudential supervisory decisions for significant credit institutions, and the NCA's responsibility for adopting such decisions for less significant credit institutions.

Article 2

Definitions

For the purposes of this Guideline, the definitions set out in Regulation (EU) No 575/2013, Directive 2013/36/EU of the European Parliament and of the Council [2], Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 (ECB/2014/17) shall apply together with the following definitions:

(a) 'review team' means a team composed of representatives of the ECB and of the NCA that is the direct supervisor of the relevant IPS members. This team is set up for the purpose of coordinating the review carried out under Article 113(7) of Regulation (EU) No 575/2013;

(b) 'review team coordinator' means an ECB staff member and an NCA staff member appointed in accordance with Article 6 and performing the tasks set out in Article 8;

(c) 'applicant' means an IPS member or a group of IPS members represented by a single entity that submits to the ECB or the relevant NCA an application seeking permission or a waiver pursuant to the provisions referred to in Article 1(1);

(d) 'hybrid IPS' means an IPS composed of significant and less significant credit institutions;

(e) 'SSM competent authorities' means the ECB and the NCAs of the participating Member States.

Article 3

Level of application

Where both significant and less significant credit institutions that are members of the same hybrid IPS simultaneously submit applications for prudential permissions and waivers to the ECB, in the case of significant credit institutions, and to the relevant NCA, in the case of less significant credit institutions, the ECB and the relevant NCA shall apply the coordination process and the provisions on monitoring set out in this Guideline, including any standard monitoring activities related to that IPS.

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[1] Guideline (EU) 2016/1994 of the European Central Bank of 4 November 2016 on the approach for the recognition of institutional protection schemes for prudential purposes by national competent authorities pursuant to Regulation (EU) No 575/2013 (ECB/2016/38) (see page 37 of this Official Journal).

[2] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

CHAPTER II

COORDINATION OF THE IPS ASSESSMENT

Article 4

Coordinated assessment

Without prejudice to the ECB and the NCAs' responsibility to grant the permissions and waivers referred to in Article 1(1), the assessment of simultaneously submitted applications from significant and less significant credit institutions, which are members of the same hybrid IPS, shall be conducted jointly by the ECB and the relevant NCA.

Article 5

Review team

1. For the purpose of coordinating the assessment of simultaneously submitted applications from significant and less significant credit institutions, which are members of the same hybrid IPS, a review team shall be established when the ECB and the relevant NCA receive applications for a permission or a waiver pursuant to the applicable provisions of Regulation (EU) No 575/2013.

2. The ECB and the relevant NCA shall appoint supervisors responsible for the day to day supervision of the credit institutions submitting the applications under paragraph 1 and staff members performing the general oversight of the functioning of the system as members of the review team. The composition of the review team and the number of its members shall depend on the number of IPS members and the importance of the relevant significant institutions.

3. The review team shall remain in place until the decisions related to applications for a permission or a waiver are adopted by the competent authorities.

Article 6

Review team coordinators

1. The ECB and the NCA that is responsible for the direct supervision of the relevant IPS members shall each designate one coordinator to manage the assessment process in respect of the applications.

2. If significant institutions that are supervised by different joint supervisory teams (JSTs) have applied for the same permission or waiver among those listed in Article 1(1), those JSTs may decide to appoint a common coordinator.

3. The coordinators shall be responsible for agreeing on a timetable and the necessary actions to develop a common view within the review team.

Article 7

Notification of application and setting up of the review team

1. The ECB and the relevant NCA shall notify each other on the receipt of any applications from significant and less significant credit institutions, which are members of a hybrid IPS.

2. On the receipt of simultaneously submitted applications the ECB and the NCA shall nominate their members of the review team.

Article 8

Assessment of the applications

1. The completeness and appropriateness of the applications shall be independently assessed by the ECB and the relevant NCA. If more information is required for the assessment of specific applications, the competent authorities may request the applicant to provide such information.

2. The ECB and the NCA shall carry out a preliminary assessment of the respective applications separately.

3. The review team shall discuss the preliminary outcome of the assessment of the applications and agree on the final outcome, taking into account any deadlines contained in national administrative law if appropriate.

4. If the review team agrees that the applications and the organisational framework of the IPS comply with the requirements of the provisions listed in Article 1(1), it shall prepare a note describing the outcome of the assessment and confirming that the requirements are met. The assessment of the review team shall be taken into consideration by the ECB and the NCAs when adopting their respective decisions on whether to grant permissions or waivers.

5. If no common view can be reached within the review team on the assessment of the applications, the issue may be submitted to the Supervisory Board for discussion. The result of the Supervisory Board discussion is without prejudice to the responsibilities of the ECB and the NCA to decide whether to grant a permission or a waiver.

Article 9

Decisions

1. The draft decisions prepared by the ECB and the relevant NCA based on the agreed outcomes of the joint assessment shall be submitted for approval to the relevant decision-making bodies, i.e. the ECB's Governing Council for applications submitted by significant credit institutions and the relevant NCA's decision-making bodies for applications submitted by less significant credit institutions.

2. These decisions shall specify the reporting requirements for the purpose of the ongoing monitoring of the members of the IPS without prejudice to any additional requirements that the ECB and the relevant NCA may impose on credit institutions during the monitoring.

CHAPTER III

IPS MONITORING

Article 10

Coordination of monitoring

1. The ECB and the NCA responsible for the supervision of an IPS member shall monitor at regular intervals the adequacy of the IPS's systems for monitoring and classification of risk pursuant to Article 113(7)(c) of Regulation (EU) No 575/2013 and that the IPS conducts its own risk review pursuant to Article 113(7)(d) thereof.

2. To ensure a consistent approach to the monitoring and the application of high supervisory standards the ECB and the relevant NCA shall coordinate their monitoring activities. For this purpose, up-to-date lists of staff members from the ECB and the NCA shall be produced.

3. The ECB and the NCA shall agree on any deadlines and actions for the purpose of the monitoring. The monitoring shall be carried out at least annually, after the consolidated or aggregated financial reports for the previous financial year, prepared pursuant to Article 113(7)(e) of Regulation (EU) No 575/2013, have become available.

Article 11

Monitoring

1. The ECB and the relevant NCA shall, within their respective competences, generally carry out the monitoring through off-site activities. Where necessary, the ECB and the relevant NCA may, within their respective competences, decide to carry out targeted on-site inspections at credit institutions, which are members of IPSs, to assess their continuing compliance with the conditions for permissions and waivers referred to in Article 1(1).

2. For the purposes of the IPS monitoring the ECB and the NCA shall take into account the available supervisory information on the IPS members, such as the supervisory review and evaluation process results and regular supervisory reporting.

3. The ECB and the NCA shall review annually the consolidated/aggregated report required pursuant to Article 113(7)(e) of Regulation (EU) No 575/2013, paying particular attention to the IPS's available funds.

Article 12

Monitoring outcomes

1. The ECB and the relevant NCA shall agree on the results and conclusions of the monitoring and, where relevant, on any necessary follow-up measures, including an intensification of the monitoring.

2. If no common view can be reached between the ECB and the relevant NCA, the issue may be submitted to the Supervisory Board for discussion. The result of the Supervisory Board discussion is without prejudice to the responsibilities of the ECB and the NCA for the prudential supervision of the respective IPS members.

3. If there are elements indicating that the requirements of the provisions listed in Article 1(1) are no longer met and that the eligibility of the IPS or some of its members and/or the permission or waivers granted may need to be reconsidered, the ECB and the NCA shall coordinate their action which may include, as appropriate, the revocation or non-application of the permissions and/or waivers.

CHAPTER IV

FINAL PROVISIONS

Article 13

Addressees

This Guideline is addressed to the SSM competent authorities.

Article 14

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the SSM competent authorities.

2. The SSM competent authorities shall comply with this Guideline from 2 December 2016.

Done at Frankfurt am Main, 4 November 2016.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI

GUIDELINE (EU) 2016/1994 OF THE EUROPEAN CENTRAL BANK

of 4 November 2016

on the approach for the recognition of institutional protection schemes for prudential purposes by national competent authorities pursuant to Regulation (EU) No 575/2013 of the European Parliament and of the Council (ECB/2016/38)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ([1]), and in particular Article 6(1) and Article 6(5)(a) thereof,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ([2]), and in particular Article 113(7) thereof,

Whereas:

(1) An institutional protection scheme (IPS) is referred to in Article 113(7) of Regulation (EU) No 575/2013 as a contractual or statutory liability arrangement which protects its member institutions and ensures that they have the liquidity and solvency needed to avoid bankruptcy where necessary. According to that provision, competent authorities may, subject to certain conditions laid down in Regulation (EU) No 575/2013, waive selected prudential requirements or allow certain exemptions for IPS members.

(2) The European Central Bank (ECB), as the competent authority for prudential supervision within the single supervisory mechanism (SSM) of credit institutions that are classified as significant, is responsible for the assessment of applications submitted by such institutions.

(3) The conditions for the assessment of IPSs for prudential purposes are stipulated in Article 113(7) of Regulation (EU) No 575/2013. This Regulation gives some discretion to competent authorities when developing the supervisory assessment required to determine if the conditions are met. To ensure coherence, effectiveness and transparency, the ECB added a new chapter to the 'ECB Guide on options and discretions available in Union law' concerning the approach for the recognition of institutional protection schemes (IPS) for prudential purposes ([3]), which specifies how the ECB will assess the compliance of IPSs and their members with the abovementioned conditions.

(4) The ECB is responsible for the effective and consistent functioning of the SSM and, as part of its oversight tasks, has to ensure the consistency of supervisory outcomes. In this context, the ECB adopts guidelines addressed to national competent authorities (NCAs), in accordance with which supervisory tasks are to be performed and supervisory decisions adopted in relation to less significant institutions.

(5) As IPSs may consist of both significant and less significant institutions, it is important to ensure the consistent treatment of their members across the SSM, to foster consistency in decisions adopted by the ECB and the NCAs. For IPSs whose members include both significant and less significant credit institutions, it is particularly important that both the ECB, which is responsible for the prudential supervision of significant institutions, and the NCAs, which are responsible for the supervision of less significant institutions, use the same specifications for the eligibility assessment. The use of the same specifications by NCAs is also warranted in the assessment of IPSs consisting solely of less significant institutions, since the composition of the IPSs, as well as the classification of their members as significant or less significant, may change over time,

([1]) OJ L 287, 29.10.2013, p. 63.
([2]) OJ L 176, 27.6.2013, p. 1.
([3]) This chapter of the Guide was adopted in July 2016. The consolidated version of the 'ECB Guide on options and discretions available in Union law' is available on the ECB's banking supervision website at www.bankingsupervision.europa.eu

HAS ADOPTED THIS GUIDELINE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

This Guideline lays down the specifications for assessing the compliance of IPSs and their members with the requirements laid down in Article 113(7) of Regulation (EU) No 575/2013 in order to determine whether permission within the meaning of that Article can be granted to individual institutions. NCAs shall apply the specifications in relation to less significant institutions.

Article 2

Definitions

For the purposes of this Guideline, the definitions contained in Regulation (EU) No 575/2013, Directive 2013/36/EU of the European Parliament and of the Council ([1]), Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ([2]) shall apply.

CHAPTER II

SPECIFICATIONS FOR THE ASSESSMENT PURSUANT TO ARTICLE 113(7) OF REGULATION (EU) No 575/2013

Article 3

Article 113(7)(a) in conjunction with Article 113(6)(a) and (d) of Regulation (EU) No 575/2013: assessment of prudential status and legal domicile

In accordance with Article 113(7)(a) in conjunction with Article 113(6)(a) and (d) of Regulation (EU) No 575/2013, when assessing the prudential status and legal domicile of the counterparty the NCAs shall take into account whether:

(a) the counterparty is an institution, financial institution or ancillary services undertaking subject to appropriate prudential requirements;

(b) the counterparty requesting the permission is established in the same Member State.

Article 4

Article 113(7)(a) taken in conjunction with Article 113(6)(e) of Regulation (EU) No 575/2013: prompt transfer of own funds or repayment of liabilities from the counterparty to the members

When assessing whether there is a current or foreseeable material, practical or legal impediment to the prompt transfer of own funds or repayment of liabilities from the counterparty to the members under Article 113(7)(a) in conjunction with Article 113(6)(e) of Regulation (EU) No 575/2013, the NCAs shall take into account whether:

(a) the shareholding or legal structure of the members could hamper the transferability of own funds or repayment of liabilities;

(b) the formal decision-making process regarding the transfer of own funds between members ensures prompt transfers;

(c) the by-laws of the members, any shareholder's agreement, or any other known agreements contain any provisions that could obstruct the transfer of own funds or repayment of liabilities by the counterparty;

([1]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

([2]) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

(d) there have been any serious management difficulties or corporate governance issues related to the members, which could have a negative impact on the prompt transfer of own funds or the repayment of liabilities;

(e) any third parties [1] are able to exercise control over or prevent the prompt transfer of own funds or repayment of liabilities;

(f) there are any indications from the past regarding flows of funds between members which demonstrate the ability to promptly transfer funds or repay liabilities.

The crisis management intermediation role and responsibility of the IPS to provide funds to support troubled members is considered key.

Article 5

Article 113(7)(b) of Regulation (EU) No 575/2013: an IPS's ability to grant the support necessary under its commitment

When assessing whether arrangements are in place which ensure that an IPS is able to grant the support it has committed to provide from funds readily available to it under Article 113(7)(b) of Regulation (EU) No 575/2013, the NCAs shall take into account whether:

(a) the arrangements include a broad range of measures, processes and mechanisms, making up the framework under which the IPS operates. This framework should comprise a series of possible actions, ranging from less intrusive to more substantial measures that are proportionate to the riskiness of the beneficiary institution and the severity of its financial constraints, including direct capital and liquidity support. The support may be conditional, for example on the implementation of certain recovery and restructuring measures by the institution;

(b) the IPS's governance structure and the process for making decisions on support measures allow support to be provided in a timely manner;

(c) a clear commitment exists to provide support when, despite previous monitoring of risks and early intervention measures, a member is or is likely to become insolvent or illiquid and to ensure that its members abide by the relevant regulatory own funds and liquidity requirements;

(d) the IPS conducts stress tests at regular intervals to quantify potential capital and liquidity support measures;

(e) the IPS's risk-absorbing capacity (consisting of paid-up funds, potential *ex post* contributions and comparable commitments) is sufficient to cover potential support measures taken in respect of its members;

(f) an *ex ante* fund has been created to ensure that the IPS has funds for support measures readily available, and

  (i) contributions to that fund follow a clearly defined framework;

  (ii) the funds are invested only in liquid and secure assets that may be liquidated at any time and whose value does not depend on the solvency and liquidity position of the members and their subsidiaries;

  (iii) the IPS's stress test results are considered for the determination of the minimum target amount of the *ex ante* fund;

  (iv) there is an adequate floor/minimum amount for the *ex ante* fund to ensure the prompt availability of the funds.

IPSs may be recognised as deposit guarantee schemes pursuant to Directive 2014/49/EU of the European Parliament and of the Council [2] and may be allowed under the conditions set out in the relevant national law to use the available financial means for alternative measures to prevent the failure of a credit institution. In this case the NCAs shall consider the available financial means when assessing the availability of funds to grant support, taking into account the different purposes of IPSs, which aim to protect their members, and deposit guarantee schemes, whose key task is to protect depositors against the consequences of the insolvency of a credit institution.

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[1] A third party is any party that is not the parent, a subsidiary, a member of a decision-making body or a shareholder of a member.
[2] Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149).

Article 6

Article 113(7)(c) of Regulation (EU) No 575/2013: IPS systems for the monitoring and classification of risk

Article 113(7)(c) of Regulation (EU) No 575/2013 provides that an IPS must have at its disposal suitable and uniformly stipulated systems for the monitoring and classification of risk, which give a complete overview of the risk situations of all the individual members and the IPS as a whole, with corresponding possibilities to intervene; and that those systems must suitably monitor defaulted exposures in accordance with Article 178(1) of the same Regulation. In assessing compliance with this condition the NCAs shall take into account whether:

(a) the IPS members are obliged to provide the IPS's main management body with up-to-date data on their risk situations at regular intervals, including information on their own funds and own funds requirements;

(b) corresponding appropriate data flows and IT systems are in place;

(c) the IPS main management body lays down uniform standards and methodologies for the risk management framework to be applied by the members;

(d) for the purposes of the monitoring and classification of risk by the IPS there is a common definition of risks, the same risk categories are monitored for all members, and the same confidence level and time horizon is used for the quantification of risks;

(e) the IPS systems for the monitoring and classification of risks classify the members in accordance with their risk situation, i.e. the IPS has defined different categories to which to assign its members to allow early intervention;

(f) the IPS is able to influence the risk situation of its members by issuing instructions and recommendations, etc., to them, for example to restrict certain activities or to require a reduction of certain risks.

Article 7

Article 113(7)(d) of Regulation (EU) No 575/2013: IPS own risk review

When assessing whether the IPS conducts its own risk review, which is communicated to the individual members in accordance with Article 113(7)(d) of Regulation (EU) No 575/2013, the NCAs shall take into account whether:

(a) the IPS assesses at regular intervals the risks and vulnerabilities of the sector to which its members belong;

(b) the results of the risk review are summarised in a report or other document and are distributed to the relevant decision-making bodies of the IPS and/or the members shortly after they have been finalised;

(c) members are informed of their risk classification by the IPS as required by Article 113(7)(c).

Article 8

Article 113(7)(e) of the Regulation (EU) No 575/2013: IPS consolidated or aggregated report

Article 113(7)(e) of Regulation (EU) No 575/2013 provides that the IPS must draw up and publish on an annual basis a consolidated report comprising the balance sheet, the profit and loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole, or a report comprising the aggregated balance sheet, the aggregated profit and loss account, the situation report and the risk report, concerning the institutional protection scheme as a whole. When assessing compliance with this condition the NCAs shall take into account whether:

(a) the consolidated or aggregated report is audited by an independent external auditor on the basis of the relevant accounting framework or, if applicable, the aggregation method;

(b) the external auditor is required to provide an audit opinion;

(c) all of the IPS members and any subsidiaries, any intermediary structures such as holding companies and the entity managing the IPS itself (if it is a legal entity) are included in the scope of consolidation/aggregation;

(d) in cases where the IPS draws up a report comprising an aggregated balance sheet and an aggregated profit and loss account, the aggregation method can ensure that all intragroup exposures are eliminated.

Article 9

Article 113(7)(f) of Regulation (EU) No 575/2013: advance notice of member termination

The NCAs shall verify whether the contract or statutory arrangements include a provision obliging members of the IPS to give advance notice of at least 24 months if they wish to end the scheme.

Article 10

Article 113(7)(g) of Regulation (EU) No 575/2013: elimination of multiple use of elements eligible for the calculation of own funds

Article 113(7)(g) of Regulation (EU) No 575/2013 provides that the multiple use of elements eligible for the calculation of own funds ('multiple gearing') and any inappropriate creation of own funds between IPS members must be eliminated. For the purposes of assessing compliance with this requirement the NCAs shall take into account whether:

(a) the external auditor who is responsible for the audit of the consolidated or aggregated financial report can confirm that these practices have been eliminated;

(b) any transactions by the members have led to the inappropriate creation of own funds at the individual, sub-consolidated or consolidated level.

Article 11

Article 113(7)(h) of Regulation (EU) No 575/2013: broad membership

When assessing compliance with the condition laid down in Article 113(7)(h) of the Regulation (EU) No 575/2013, namely that the IPS must be based on a broad membership of credit institutions of a predominantly homogeneous business profile, the NCAs shall take into account:

(a) whether the IPS has sufficient members (among the institutions that are potentially eligible for membership) to cover any support measures it may have to implement;

(b) the members' business models, business strategies, sizes, customers, regional focus, products, funding structures, material risk categories, sales cooperation and service agreements with other IPS members, etc.;

(c) whether the various business profiles of the members allow the monitoring and classification of their risk situations using the uniformly stipulated systems that the IPS has in place pursuant to Article 113(7)(c) of Regulation (EU) No 575/2013;

(d) that IPS sectors are often based on collaboration, meaning that central institutions and other specialised institutions in the IPS network offer products and services to other IPS members. When assessing the homogeneity of business profiles the NCA should consider the extent to which the members' business activities are related to the network (products and services provided to local banks, services to shared customers, capital market activities, etc.).

CHAPTER III

FINAL PROVISIONS

Article 12

Taking effect and implementation

1. This Guideline shall take effect on the day of its notification to the NCAs.

2. The NCAs shall comply with this Guideline from 2 December 2016.

Article 13

Addressees

This Guideline is addressed to the NCAs.

Done at Frankfurt am Main, 4 November 2016.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI

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